

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CR 11-314 (N.G.G.)

UNITED STATES OF AMERICA

- v -

RAPHAEL GONZALEZ,

Defendant

-----X

SENTENCING MEMORANDUM  
ON BEHALF OF  
RAPHAEL GONZALEZ

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Background

Put simply, the Court has before it a thirty-two year old, illiterate, with a murky seventh grade education, and a tumultuous criminal history since the age of fifteen. For all intents and purposes Raphael Gonzalez has had no gainful employment to date. Yet he testified, despite tremendous pressure and at great personal risk, against the leader of, by any yardstick, one of the most murderous and terrorizing drug gangs ever to be prosecuted in this District. The scope and seriousness of this gang is reflected in this Court's sentencing of its leader, Ronald Herron, to twelve life sentences plus one hundred and twelve years consecutive to the life sentences. Raphael Gonzalez is before this Court having pled to a six count superseding information

charging racketeering, racketeering conspiracy, assault with a dangerous weapon in aid of racketeering, accessory after the fact – murder, conspiracy to distribute 280 grams or more of cocaine base and discharge of firearms in furtherance of crimes of violence and drug trafficking offenses. Taken together, the charges carry a mandatory minimum sentence of twenty years imprisonment and an overall Guideline range of 36 years to life, to be followed by a consecutive ten year minimum on Count Six.

### Personal History

This Court is intimately familiar with Raphael Gonzalez's role in the heroin organization and the roles of others, having presided over the trial of Herron and having witnessed Gonzalez's testimony. It will not be repeated here. If one carefully reviews the offender characteristics section of the PSI report (pages 20 – 24) with its conflicting statements as to pertinent family events (deaths, etc.) it makes most sobering reading. To put that he had a "rough" upbringing would be an understatement, but it is a pattern that is all too frequently seen in drug gang prosecutions. Early on—age seven—he was diagnosed with a learning disability and he received Supplemental Security Income benefits. A romantic relationship has produced a daughter whom he says "he adores", but his relationship with the child's mother is tenuous at best and, at this point, she is clearly not a viable support net.

A sobering evaluation of his personal history indicates that by conventional norms some would consider Gonzalez to have been raised close to the Ninth Circle<sup>1</sup>, but one thing is for sure. He is, given the neighborhood and his associates, lucky to be alive. One thing is crystal clear—

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<sup>1</sup> Dante Alighieri, *The Divine Comedy: The Inferno*, Canto XXXII, Modern translation, John Ciardi, New American Library (2003)

any sentence must insure that he is moved from the area because otherwise he will be dead, one way or another.

### The Cooperation

As previously noted, the Court presided over the trial of Ronald Herron and had an opportunity to evaluate Gonzalez's demeanor and the credibility of his testimony. As the Government's 5K1.1 letter points out, the jury clearly credited Gonzalez's testimony which served as the only evidence linking Herron to the Russo homicide. A dispassionate review of his trial testimony reveals he withstood a blistering cross examination and gave as good as he got. The Government's 5K1.1 letter is meticulously detailed and counsel adopts its conclusions without reservation. Not entirely as an aside, for an office that is not known for over the top statements in 5K1.1 letters, this letter is significant not only in the scope of its contents but the specificity as to numerous instances where Gonzalez's evidence was critical to the Government's prosecution.

A Senior Judge in this district has opined that there are two types of cooperation, that with a small "c" and that with a capital "C". This is much the latter case. In instances such as this Courts are routinely advised as to the threat of retaliation and how cooperators must spend the rest of their lives "looking over their shoulders." As the Government's 5K1.1 letter points out, numerous potential witnesses were threatened, some successfully, by members of Herron's organization. What happened to Gonzalez is particularly noteworthy.

Gonzalez was transferred from one facility to another for his own safety and every effort was made to insure his safety. Yet, soon after his transfer a female guard advised him that she was a friend of Herron's and would let him know where he was. It is difficult to imagine, given

the previous intimidation of witnesses by Herron, the despair and anxiety Gonzalez must have endured both leading up to and after the trial. Gonzalez has been incarcerated for in excess of five years. Social media continues to lionize Ronald Herron.

CONCLUSION

CONTINUED INCARCERATION OF RAPHAEL GONZALEZ SERVES NOBODY'S PURPOSE. HE SHOULD BE RELEASED AND RELOCATED.

Dated: April 15, 2016  
Sandwich, NH 03227

Respectfully submitted:

/s/: Harry C. Batchelder, Jr.

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Certificate of Service

I hereby certify that the above document was served on April 15, 2016 via United States Postal Service to United States Probation, Eastern District of New York, 147 Pierrepont Street, Brooklyn, NY 11201-4201.

/s/: Harry C. Batchelder, Jr.

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